

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

LEANDRA L HAUGHEY

Claimant

APPEAL NO. 09A-UI-04622-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

**Original Claim: 02/15/09
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Casey's Marketing Company filed an appeal from a representative's decision dated March 11, 2009, reference 01, which held that no disqualification would be imposed regarding Leandra Haughey's separation from employment. After due notice was issued, a hearing was held by telephone on April 20, 2009. Ms. Haughey participated personally. The employer participated by Connie Fontinell, Manager.

ISSUE:

At issue in this matter is whether Ms. Haughey was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Haughey was employed by Casey's from November 21, 2007 until February 16, 2009. She was employed full time as a cashier and pizza maker. She was discharged from the employment.

The employer met with Ms. Haughey on January 19, 2009 to give her a written warning. She was told she was not to purchase lottery tickets during her shift or allow other employees to access her assigned cash register. She was also told she was not to use her cell phone while on duty or leave work without permission.

The decision to discharge Ms. Haughey was due to the fact that she purchased lottery tickets at the end of her shift on February 11. She felt her actions were permissible because she was making preparations to leave work. She did not have a coworker ring up her lottery tickets because she had previously been admonished about allowing others to access her register. The discharge was also prompted by the fact that she left work without notifying her manager and used her cell phone at work on February 13. Ms. Haughey had split her pants at work and used her cell phone to call her husband to see if he could bring her a different pair. When he could not, she used her cell phone in an attempt to contact her manager to say she was going

home to change her pants. She waited for someone to relieve her on duty and then left for ten minutes to go home to change. She was notified of her discharge on February 16, 2009.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). For reasons that follow, it is concluded that misconduct has not been established. Ms. Haughey did purchase lottery tickets on February 11 after being warned on January 19. However, the purchase was made at the end of her shift, not during it. It was not unreasonable for her to assume that, because they were purchased when she was making preparations to close the store, her actions would be permissible. At most, her actions constituted a good-faith error in judgment.

It is also true that Ms. Haughey used her cell phone at work and left the store for a brief time during her shift on February 13. However, her actions were the result of an emergency situation. She split her pants and needed to make arrangements to take care of the matter. She used her cell phone only because she needed to have a change of clothing brought to her or needed permission from her manager to leave and change clothes. For the above reasons, it is concluded that her actions of February 13 were not intended as a deliberate disregard of the employer's standards.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that substantial and disqualifying misconduct has not been established. While the employer may have had good cause to discharge Ms. Haughey, conduct that might warrant a discharge will not necessarily support a disqualification from job insurance benefits. Benefits are allowed.

DECISION:

The representative's decision dated March 11, 2009, reference 01, is hereby affirmed. Ms. Haughey was discharged, but disqualifying misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw